IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

COURT'S ORDER WHETHER THE CASE IS OR IS NOT
APPROVED FOR REPORTING
[Chapter VIII, Rule 32(2)(b)]
Description of case

Civil Writ Petition No. 1218 of 2001 (S/S) **Decided on: Nov. 18, 2006**

A.F.R. (Approved for Reporting)
Not approved for Reporting

Date. 18.11.2006

(Initial of Judge)

Not: Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT ANINITAL

Civil Writ Petition No. 1218 of 2001 (S/S)
(Old No. 40168 of 1999)

Gopal Singh Bisht
S/o Sri K.S. Bisht
R/o Towers, Nainital.

…….. Petitioner

Versus

1. Joint Director of Education
   Kumaon Region, Nainital.
2. District Inspector of Schools
   Nainital.
3. Principal
   Government Inter College,
   Josyura, District Nainital.
4. Director of Education (Basic)
   U.P. Allahabad.

…….. Respondents

Mr. Kamlesh Tiwari, Advocate holding brief of Mr. Manoj Tiwari, learned counsel for the petitioner.
Mr. N.P. Sah, learned Standing Counsel for the State.

Hon'ble Prafulla C. Pant, J.

By means of this petition, moved under Article 226 of the Constitution of India, the petitioner has sought writ in the nature of certiorari quashing the impugned order dated 31.08.1999 (Annexure -3 to the writ petition), whereby the services of the petitioner are terminated. A mandamus has also been sought commanding the respondents to permit the petitioner to work on the post of junior clerk, held by him. Further mandamus has been sought commanding the respondents to regularly pay salary for the post held by the petitioner.

2) Head learned counsel for the parties perused the record.

3) Brief facts of the case, as narrated in the writ petition, are that in the year 1998, posts of junior clerks were created in various Government institutions in District Nainital. An advertisement is made for recruitment to the post of junior clerks. Pursuant to the advertisement, the petitioner made an application, for his appointment on the pos of junior clerk. He was appointed as junior clerk in Government Inter Collect, Josyura, vide order dated 24.07.1998 (copy Annexure -1 to the writ petition). He joined the duties in the same month on 31st of July 1998, with the said Institution. It is alleged by the petitioner that he discharged his duties to the utmost satisfaction of the senior authorities. It is stated in the writ petition that shockingly vide order dated 31.08.1999, the services of the petitioner were terminated. The petitioner has alleged that similarly situated junior clerks are still working with various institutions, run by the State Government. It is further stated in the writ petition, that no irregularity was committed in the appointment of the petitioner, as such, termination of his services is illegal and arbitrary.

4) Respondents contested the writ petition and a counter affidavit was filed on their behalf, in which it is stated that petitioner's appointment was made against the bar in the recruitment, imposed by the Government. It is further stated that no advertisement of vacancy was made in any daily newspaper. It is also alleged in the counter affidavit, that keeping in view the irregularities committed by the then Joint Director of Education, he was placed under

suspension. Defending the order of termination, passed against the petitioner, it is stated in the counter affidavit that his appointment was made in violation of the selection procedure. It is further stated in the counter affidavit that services of the petitioner were purely temporary in nature and were liable to be terminated at anytime, by giving one months' notice or by making payment of one months' salary, in lieu thereof. Denying that other similarly situated persons were permitted to continue, it is stated that whenever appointments of such candidates were brought to the knowledge of the Department, which were made against the ban imposed by the Government and against the procedure of selection, their services where terminated.

5) Before further discussions, it is pertinent to mention here, that the appointment letter dated 24.07.1998 (copy Annexure-1 to the writ petition) itself indicates that the petitioner's appointment was temporary in nature and it was expressly provided in it, that his services were liable to be dispensed with at any time after giving one months' notice or payment of one months' salary, in lieu thereof.

6) The impugned order of termination is Annexure -3 to the writ petition, which shows that since the petitioner's appointment was made surreptitiously, against the ban imposed by the Government and without due selection process, as such, after giving a show cause notice dated 23.04.1999, and considering the reply received form the petitioner, his service were terminated. The order of termination does not cast stigma on the petitioner. If at all something is alleged, it is against the appointment authority, and not on the employee appointed. As such, considering

that no stigma was casted on the conduct of the petitioner, and since, nature of his services was temporary, the same was liable to be dispensed with at any time without assigning any reason, by giving him one months' salary or on payment of one months' salary, in lieu thereof, it cannot be said that the impugned order (copy Annexure -3 to the petitioner) was passed in violation of any law. Nor can it be said to be arbitrary or in violation of any service rules.

7) Learned counsel for the petitioner argued that similarly situated other persons are continuing in job, as such, the petitioner alone cannot be discriminated. I do not find substance in the submission, for the reason that no names have been disclosed by the petitioner in the writ petition who were illegally appointed and retained in the service. Had the petitioner disclosed the same, the respondents would have got a right to explain as to why the petitioner was discriminated. Since, no particulars are disclosed by the petitioner, it cannot be said that the petitioner's argument in this regard carries weight.

8) For the reasons as discussed above, this writ petition is liable to be dismissed, as no right of the petitioner has been violated by issuing the order of termination, passed against him. The writ petition is dismissed. The interim stay order dated 17.09.1999, passed by the Allahabad High Court in this petition, is hereby, vacated. (All pending applications in this Petition also stand disposed of).

(Prafulla C. Pant, J.)

Dt.: November 18, 2006
H.Nagi